

1
2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
5

6 FELIPE CALDERON,

7 Plaintiff,

8 vs.

9 DAVEY TREE SURGERY COMPANY,

10 Defendant.
11

Case No: C 11-5486 SBA

**ORDER GRANTING PLAINTIFF'S
REQUEST FOR APPOINTMENT
OF COUNSEL**

12
13 Plaintiff has submitted a pro se request for the Court to appoint counsel to represent
14 him in this action. Dkt. 92 at 2-3. “[I]t is well-established that there is generally no
15 constitutional right to counsel in civil cases.” United States v. Sardone, 94 F.3d 1233, 1236
16 (9th Cir. 1996). Nonetheless, under 28 U.S.C. § 1915(e)(1), the Court has the discretion to
17 appoint counsel to “any person unable to afford counsel.” The discretionary appointment
18 of counsel typically is reserved for cases involving “exceptional circumstances.” Terrell v.
19 Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). “A finding of exceptional circumstances
20 requires an evaluation of both ‘the likelihood of success on the merits and the ability of the
21 petitioner to articulate his claims pro se in light of the complexity of the legal issues
22 involved.’ Neither of these factors is dispositive and both must be viewed together before
23 reaching a decision.” Id.

24 Here, Plaintiff is unable to communicate in English, which necessarily impedes his
25 ability to articulate his claims to either the Court or a jury. Although Plaintiff’s motion
26 does not specifically address his likelihood of success, the Court notes that the law and
27 motion cut-off lapsed without Defendant filing any dispositive motion in this case. Dkt. 17.
28 Given that fact, it is reasonable to infer that there are triable issues of material fact that must


1 be resolved by a trier of fact. Moreover, the Federal Pro Bono Project, has indicated that it
2 is likely that it will be able to find a volunteer attorney to represent Plaintiff in this action.
3 Accordingly,

4 IT IS HEREBY ORDERED THAT:

- 5 1. Plaintiff's Motion to Appoint Counsel is GRANTED.
- 6 2. This matter is REFERRED to the Federal Pro Bono Project for the purposes
7 of securing legal representation for Plaintiff in this action, for all purposes.
- 8 3. The instant action is temporarily STAYED while the Federal Pro Bono
9 Project locates volunteer counsel for Plaintiff.
- 10 4. The deadlines for filing motions in limine and other pretrial documents, the
11 settlement conference set for March 25, 2013, the pretrial conference date of May 7, 2013,
12 and the trial date of May 13, 2013 are VACATED. These dates shall be rescheduled at a
13 further Case Management Conference which will be scheduled after the appointment of pro
14 bono counsel.
- 15 5. This Order terminates Docket 47, 51 and 54.

16 IT IS SO ORDERED.

17 Dated: March 11, 2013


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 FELIPE CALDERON,

5 Plaintiff,

6 v.

7 DAVEY TREE SURGERY COMPANY et al,

8 Defendant.
9 _____/

10 Case Number: CV11-05486 SBA

11 **CERTIFICATE OF SERVICE**

12
13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
14 Court, Northern District of California.

15 That on March 11, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said
16 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
17 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
18 located in the Clerk's office.

19
20 Felipe Calderon
21 4322 Center Avenue
22 Richmond, CA 94804

23 Dated: March 11, 2013

24 Richard W. Wieking, Clerk

25 By: Lisa Clark, Deputy Clerk
26
27
28